

Attorney Docket No.: F3311(C)
Serial No.: 10/603,343
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BRIEF FOR APPELLANT

Sir:

This is a Brief on Appellants' Appeal from the Examiner's Final Rejection concerning the above-identified application.

The Commissioner is hereby authorized to charge any additional fees, which may be required to our Deposit Account No. 12-1155, including all required fees under: 37 C.F.R. §1.16; 37 C.F.R. §1.17; 37 C.F.R. §1.18; 37 C.F.R. §1.136.

TABLE OF CONTENTS

I. Real Party In Interest	3
II. Related Appeals and Interferences	3
III. Status of Claims	3
IV. Status of Amendments	4
V. Summary of the Claimed Subject Matter	4-5
VI. Grounds of the Rejection to be Reviewed on Appeal	5-6
VII. Argument	7-12
VIII. Conclusion	13
IX. Claims Appendix	14-15
X. Evidence Appendix	16
XI. Related Proceedings Appendix	17

I. REAL PARTY IN INTEREST

The Real Party in Interest in this Appeal is Unilever Bestfoods, North America, a Division of Conopco, Inc. and a corporation of the State of New York, whereby such Real Party in Interest is presently referred to as Conopco, Inc., d/b/a Unilever.

II. RELATED APPEALS AND INTERFERENCES

Neither the Appellants, their legal representatives nor the Assignee are aware of any other Appeals or Interferences relating to the present Appeal.

III. STATUS OF CLAIMS

This Appeal is taken from the Final Rejection of claims 1 through 9, the pending claims in the application. A copy of the appealed claims is attached to this Brief as an Appendix.

IV. STATUS OF AMENDMENTS

A Response after the Final Rejection was filed on February 28, 2008. The Response was entered by the Examiner for purposes of this Appeal, whereby such Response (filed under 37 CFR §1.116) did not contain any amendments.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The invention set forth in the claims on appeal is directed to a method for preparing a fabricated leaf tea product. The fabricated tea leaf product prepared infuses faster than conventional leaf tea and results in a beverage having superior strength and tea quality. The claims describe a superior method where tea leaf is mixed with tea solids derived from tea powders and the resulting mixture is simultaneously wetted and dried.

By the presently claimed invention, therefore, a superior method for making a fabricated leaf tea product is identified. As may be readily gleaned from, for example, Examples 1-4 in the specification, the claimed method unexpectedly

results in fabricated leaf tea product that infuses fast and results in a superior beverage having excellent strength and tea quality.

In the Specification, the portion from page 1 to page 3, line 13, is background. The phraseology used in independent claims 1 may be found, among other places, in the Summary of the Invention found on page 3 of the specification as originally filed. Support for the dependent claims may be found, among other places on page 7 of the specification and the examples. Beginning at page 8, working examples illustrate the unexpected and superior tea qualities obtained when using the fabricated leaf tea product of this invention.

VI. GROUNDS OF THE REJECTION TO BE REVIEWED ON APPEAL

The issues raised in this appeal are primarily ones of fact and of the type normally encountered in connection with rejections made under 35 USC § 103. In particular, the issues are as follows:

I. Would one of ordinary skill in the art, upon reading Carns et al., EP Patent Application No. 0910956 A1, find it obvious under 35 USC §103 to prepare fabricated leaf tea product as defined in claims 1-4 and 9?

II. Would one of ordinary skill in the art, upon reading Carns et al., EP Patent Application No. 0910956 A1, in view of Menzi, U.S. Patent No. 6,056,949, find it obvious to prepare fabricated leaf tea product as defined in claims 5-8?

VII. ARGUMENT

I. Rejection Under 35 USC § 103

The Examiner has maintained the rejection of claims 1-4 and 9 under 35 USC § 103 as being unpatentable over Carns et al., EP Patent Application No. 0910956 (hereinafter, '956).

In the rejection, the Examiner maintains, in summary, that the '956 reference describes a method for making a combined tea product with a mixture of tea leaves and tea solids. The Examiner continues by concluding that the method described in the '956 patent coats tea solids onto tea leaves. Even further, the Examiner continues to take the position that the '956 reference teaches that tea concentrate can be sprayed onto tea leaves wherein the leaves are subjected to a drying step. Since the Examiner concludes that spraying and drying (as disclosed in the '956 reference) can either occur simultaneously or in separate steps, the Examiner believes that the '956 reference teaches the invention set forth in independent claim 1 of the present patent application. In fact, as mentioned in the record, the Examiner incorrectly concludes that the claims include the possibility that the tea leaves and tea powders can be combined after being wetted separately but simultaneously and then dried together. Finally, the Examiner maintains that soluble tea leaves are described in the '956 reference where the same may be mixed with water to produce a resulting mixture that is sprayed over a fluidized bed containing

tea leaves. In view of this, the Examiner believes that the aforementioned obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Appellants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

The present invention, as set forth in independent claim 1, is directed to a method for preparing a fabricated leaf tea product comprising the steps of:

- (a) mixing leaf tea with tea solids derived from tea powder to product a mixture; and
- (b) simultaneously wetting and drying the mixture to produce the fabricated leaf tea product.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, the amount of tea powder mixed with the tea leaf, the moisture content of the fabricated leaf tea product, that the mixing of the leaf tea and tea powder and the simultaneous wetting and drying of the mixture of leaf tea and tea powder occur in a fluidized bed, and that the fabricated leaf tea product can give an infusion under 10-15 seconds with water at a temperature between 80 and 90°C.

In contrast, and as already made of record, the '956 reference is merely directed to a tea bag for ice tea beverages. The '956 reference does not, even remotely, describe a process where tea leaves and tea powder are simultaneously wetted and dried as a mixture. Appellants wish to respectfully point out that the Examiner's interpretation of the claims is not correct.

Particularly, a mixture of leaf tea and tea solids is wetted and dry. As set forth in the claims the mixture is treated and this is not possible using the Examiner's interpretation of the claimed language. The '956 reference, again, is merely directed to spraying tea concentrate onto tea leaves. No mixture of tea leaf and tea powder is made wherein the resulting mixture is simultaneously wetted and dried as claimed in the present invention. In fact, the reference describes thermally treating tea leaves then combining the thermally treated leaves with soluble tea solids. No wetting step and no drying step to a mixture are simultaneously required or suggested. Moreover, the examples provided herein demonstrate that treatment which is not simultaneous teaches away from the claimed invention and results in an inferior product. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in the '956 reference. Therefore, a *prima facie* case of obviousness has not been established and the rejection made under 35 USC §103 should be withdrawn and rendered moot.

II. Rejection Under 35 USC §103

The Examiner has maintained the rejection of claims 5-8 under 35 USC §103 as being unpatentable over Carns et al., EP 0910956 A1 (hereinafter, '956) in view of Menzi, U.S. Patent No. 6,056,949 (hereinafter, '949). In the rejection, the Examiner maintains, in summary, that the '956 reference is being applied to claims 1-4 and 9 as previously discussed. The Examiner maintains that the '956 reference describes a method for combining tea product with a mixture of tea leaves and tea solids wherein the Examiner acknowledges that the '956

reference fails to specifically describe or suggest any temperatures consistent with those claimed in the present invention.

Again, and in an attempt to cure the vast deficiencies of the '956 reference, the Examiner relies on the '949 reference and notes that the reference teaches a process of making granulated flavorings including tea flavors by using a fluidized bed having air temperatures for coating and drying in the range from about 30-80°C. The Examiner further maintains that the '949 reference describes spraying as a method of coating the flavor on to a base material when the temperature of the fluidized bed being used is kept relatively constant so that drying and coating runs in a uniform rate. In view of such a conclusion, the Examiner maintains that the rejection to claims 5-8 under 35 USC § 103 is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is, again, the Appellants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, independent claim 1, as presented, is directed to a method for preparing a fabricated leaf tea product comprising the steps of:

- (a) mixing leaf tea with tea solids derived from tea powders to produce a mixture; and
- (b) simultaneously wetting and drying the mixture to produce the fabricated leaf tea product.

Dependent claim 5 further limits the simultaneous wetting and drying step in that the mixture is wetted by spraying hot water on to the fluidized bed. Claim 6

further limits the spraying of the hot water in that the hot water is supplied at a temperature range from about 30 to about 60°C. Claims 7-8 specifically describe the processing temperatures of the fluidized bed employed.

In contrast, and as already made of record, the '956 reference is directed to a tea bag for ice tea. The tea bag for ice tea comprises tea leaves and dried soluble tea solids that can be immersed in cold water to produce a beverage having a theaflavin content of at least 25% of the theaflavin content of a standard tea beverage. The method for preparing the iced tea bag described in the '956 reference is clear. Specifically, tea leaves alone are treated at a temperature of at least 80°C. The treated tea leaves are then (after being treated at 80°C) combined with tea solids to provide a mixture with about 30 to about 95% by weight tea leaves and with about 5% to about 70% by weight dried, soluble tea solids. The mixture is then packaged in the tea bag. There is no teaching whatsoever in the '956 reference that even remotely suggests the simultaneous wetting and drying of a mixture of tea leaf and tea powder as claimed in the present invention.

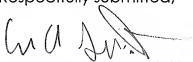
The '949 reference, again, does not cure any of the vast deficiencies of the '956 reference since the '949 reference is directed to a process for the preparation of spherical or substantially spherical aromatic and odoriferous granulated material which is free flowing. Again, the process described requires fluidizing a core material in an air fluidized bed by introducing air into a rotor-granulator to cause the material to be fluidized by air and the rotor. Flavorant or odorant emulsion is then sprayed below the surface of the fluidized core material wherein the flavorant or odorant emulsion is granulated in fluidized core material. Column 2 at lines 49-51 of the '949 reference merely mentions air

temperatures that are employed to make mechanically stable flavorant and odorant granulates having a narrow particle size distribution. The combination of the '956 reference and the '949 reference does not, even remotely, describe a process where a mixture of tea leaf and tea solids is simultaneously wetted and dried to produce a fabricated leaf tea product. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in the combination of references relied on by the Examiner. Therefore, a *prima facie* case of obviousness as required under 35 USC § 103 has not been established and the rejection made under the same should be withdrawn and rendered moot.

VIII. CONCLUSION

Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the Examiner's final rejections under 35 U.S.C. §103.

Respectfully submitted,



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IX. CLAIMS APPENDIX

1. A method for preparing a fabricated leaf tea product comprising the steps of:
 - (a) mixing leaf tea with tea solids derived from tea powders to produce a mixture; and
 - (b) simultaneously wetting and drying the mixture to produce the fabricated leaf tea product.
2. The method according to claim 1 wherein the amount of tea powder mixed with the leaf tea is between about 10 and about 75% of the weight of the leaf tea.
3. The method according to claim 1 wherein the fabricated leaf tea product is dried to about 3 to about 8% moisture.
4. (currently amended) The method according to claim 1 wherein the mixing of the leaf tea and the tea powder and the simultaneous wetting and drying are performed in a fluidized bed.
5. The method according to claim 4 wherein the mixture of leaf tea and tea powder is wetted by spraying hot water on to the fluidized bed.
6. The method according to claim 5 wherein the hot water is at a temperature in the range about 30 to about 60°C.

7. The method as claimed in claim 5 wherein the temperature of the fluidized bed is in the range about 35 to about 50°C.
8. The method as claimed in claim 7 wherein the temperature of the fluidized bed is about 35°C.
9. The method as claimed in claim 1 wherein the fabricated leaf tea product give an infusion under 10 to 15 seconds with water at a temperature between 80 and 90°C.

X. EVIDENCE APPENDIX

No evidence pursuant to §§ 1.130, 1.131 or 1.132 is submitted herewith.

XI. RELATED PROCEEDINGS APPENDIX

No decisions rendered by a Court or the Board of Appeals and Patent Interferences have been made; therefore, no such decisions are submitted herewith.